

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4049 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO. LTD.

Versus

NARENDRABHAI SAVJIBHAI PARMAR

Appearance:

1. First Appeal No. 4049 of 2001
MS LILU K BHAYA for appellant No. 1
NOTICE SERVED BY DS for Respondents Nos. 1 and 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/01/2002

ORAL JUDGEMENT

1. By filing this appeal under section 173 of the Motor Vehicles Act, 1988 ('the Act' for short), appellant has brought under challenge the order dated 13.12.2000 recorded below Ex.9 in MACP No. 317 of 2000 by the learned MACT (Aux.), Jamnagar by which the appellant is

directed to pay Rs.25,000/- with interest jointly and severally with the driver and owner of the vehicle involved in the accident by way of compensation under no fault liability principle envisaged under Section 140 of the Act.

2. Ms. Lilu Bhaya, learned advocate for the appellant has contended that the appellant has taken a contention before the Tribunal by filing written objections at Ex.26 that loss of two teeth cannot be called permanent disability in view of Section 142 of the Act and, therefore, Section 140 of the Act cannot be attracted and resultantly no award ought to have been passed in favour of respondent No.1 - claimant by the Tribunal.

3. In support of her aforesaid contention, reliance is placed on the decision of the High Court of Kerala in the case of United India Insurance Company Limited v. Thomas and others, 2000 ACJ 1413 wherein the Kerala High Court has taken the view that loss of front right upper incisor tooth does not amount to permanent disability in view of clause (a) or (b) of Section 142 of the Act.

4. Though notice issued to the respondents have been served upon respondent Nos.1 and 3 i.e., the claimant and owner, whereas not served upon respondent No.2, driver, none appears on their behalf.

5. I have heard Ms. Lilu Bhaya, learned advocate for the appellant. I have perused the averments made in the memo of the appeal, the grounds set out therein and also the impugned award and also the judgment cited at the bar.

6. There is no dispute about the fact that the original claimant has sustained injuries over tongue and teeth and therefore doctor has assessed his disability by 10% by way of permanent partial disablement. The claimant has produced medical certificate before the Tribunal. A copy of the same is shown to me for perusal by Mr. Bhaya during the course of her submission.

7. It is true that in the case of United India Insurance Company (supra) the High Court of Kerala has taken the view that loss of front right upper incisor tooth does not amount to permanent disability contemplated in clause (a) or (b) of section 142 of the Act. The said judgment can have a persuasive value but cannot be a binding precedent to this Court. One cannot be oblivious to the fact that the order passed for no

fault liability principle, that is, Section 140 of the Act is an interim compensation and it is obviously subject to the adjustments against the final award that may be passed in MACP No. 317 of 2000 which is still pending before the MACT (Aux.) at Jamnagar. This principle is established by the Supreme court in the case of The Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala, 2001 (4) JT 477.

8. In view of the aforesaid state of affairs, I see no justifiable ground or valid reason to interfere with the impugned award at this stage. However, with a view to safeguard the interest of the appellant insurance company, undertaking of the original claimant is required to be obtained so that the original claimant shall not abandon the main claim petition and withdraw the amount unconditionally with a view to flitter away the amount of compensation of RS.25,000/- and interest thereon which is awarded in his favour.

9. In this view of the matter, it is directed that the original claimant shall file a solemn undertaking before the Tribunal within a period of four weeks of the service of this order to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause and that the claimant shall obtain a decision on merit in the said claim petition. The amount awarded under the impugned award shall be adjusted against the final award in the main claim petition. On the aforesaid undertaking being filed by the claimant, 50% of the amount under the impugned award may be permitted to be withdrawn by the original claimant on furnishing security to the satisfaction of the Tribunal and the remaining 50% of the amount under the impugned award shall be invested in the name of the Nazir of the Tribunal in a cumulative deposit scheme yielding higher rate of interest for the period till the decision in the main claim petition.

10. Subject to the aforesaid observations and directions, the appeal is dismissed with no order as to costs.

11. The amount deposited in the appeal, if any, with the registry is directed to be transmitted to the Tribunal forthwith. Remaining deficit amount shall be deposited by the appellant with the Tribunal within a period of four weeks hereof. D.S. is permitted.

(A.M. Kapadia, J.)

